HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1904/2005 (S/S)
Hoshiar Singh
& others
Vs
State of Uttaranchal
& others

Approved for reporting. (Yes)

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~~Not approved for reporting~~

Date of decision 20.12.2005

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 1904 of 2005 (S/S)

1. Hoshiar Singh S/o Sri Khyat Singh Rawat
   R/o Village Ghodpala Malla,
   P.O. Talayi (Ghodpala),
   District Pauri Garhwal.
2. Rashmi Tiwari d/o Late Sri Ramraj Tiwari
   R/o District- Pauri Garhwal.
3. Harshpal Singh S/o Sri Chandra Singh Bisht
   R/o Village Chainpur, P.O. Bara Bioron Khal,
   Patti- Khatli District Pauri Garhwal.
   Hospital, Hallumazra, District Haridwar
4. Durga Prasad S/o Sri Dani Ram,
   R/o Chirkham,
   P.O. Bara Askot,
   District- Pithoragarh.
5. Khema Chand Sharma S/o Sri Jaikrishan,
   R/o Village- Bharsa (Jmrani),
   P.O. Amrapur, District Nainital.
6. Ravindra Singh S/o Bakhtawar Singh,
   R/o Baispani, P.O. Jamnikhal,
   District Tehri Garhwal.
7. Raghubir Singh S/o Late Humum Singh
   R/o Gosil, P.O. Hindolkhal,
   District Tehri Garhwal. ..... Petitioners.

Vs.

1. State of Uttaranchal through Secretary,
   Industrial Department, Dehradun.
2. Director, Geology and Mining Unit,
   Industrial Directorate, Uttaranchal,
   Dehradun ..... Respondents.

December 20, 2005

Sri M.C.Pant, learned counsel for the petitioners.
Standing Counsel for the State of Uttaranchal.

Hon'ble Rajesh Tandon, J.

1. Heard Mr. M.C. Pant, learned counsel for the petitioners and learned Standing Counsel for the State. Learned counsel for the petitioners prayed for and is granted permission to withdraw the name of petitioners 2, 4 and 10,namely, Jaipal Singh, Geeta Chauhan and Madho Singh from the array of the petitioners. therefore, this petition is now confined to petitioners no.1, 3, 5, 6, 7, 8 and 9, namely, Hoshiyar Singh, Rashmi Tiwari, Harshpal Singh,

Durga Prasad, Khema Chand Sharma, Ravindra Singh and Raghubir Singh. Both the parties have agreed that in view of this Court's Order passed in Writ Petition No. 82 of 2004 (S/S), the matter may be decided at the admission stage.

2. By the present writ petition, the petitioners have prayed for a writ of mandamus directing the respondents to consider their cases for regularization and to pay them regular pay scale. The Details of the year of appointment of the petitioners and posts held by them are as under:

Name	Year of appointment	Post
Hoshiyar Singh	1991	Typist
Rashmi Tewari	1997	Typist
Harshpal Bisht	1994	Peon
Durga Prasad	1994	Lab-Attendant
Khem Chand Sharma	1994	Night Guard
Ravindra Singh	1995	Peon
Raghubir Singh	1992	Night Guard

The petitioners have further submitted that though they were initially appointed on daily wage basis but considering the long services they were declared to have been working against the clear and substantive vacancies. According to the petitioners, since they are working for more than ten years, it can very well be presumed that they are performing work of regular and perennial nature. According to the petitioners they are entitled for regularization according to regularization rules framed by the State of Uttaranchal for the daily wager as the work and posts are vacant in the department. The petitioners have further submitted that they have made several representation for regularization to the concerned authorities but of no avail. The petitioners have relied on the judgment of the Lucknow Bench of the Allahabad High Court in Writ Petition No.

6240 (S/S) of 1991 – Jitendra and others Vs. State of U.P. and others, which was filed for the same relief and pertaining to the same department. The said writ petition was allowed vide order dated 26.04.2000. State of U.P. filed appeal against the said order being Special Appeal No. 231 of 2000 (State of U.P. and others Versus Jitendra and others) which was dismissed by the Division Bench of the Allahabad High Court. Thereafter the respondents have filed Special Leave Petition No. 6057 of 2001 against the order dated 19.02.2001 before the Apex Court, which was also dismissed on 28.09.2001.

3. So far as the regularization is concerned, Rule 4 of the Uttaranchal Regularization of Ad hoc Appointments (Outside the Purview of the Public Service Commission), Rules, 2002 is reproduced below:

> "4. Regularization of ad-hoc appointments- (1) Any person who-
> was directly appointed on ad-hoc basis before June 30, 1998 and is continuing the service on the date of commencement of these rules;
> possessed requisite qualifications prescribed for regular appointment at the time of ad-hoc appointment; and
> has completed or as the case may be, after he has completed three years service as such, shall be considered for regular appointment in permanent or temporary vacancy, as may be available, on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant rules or orders.
> (2) In marking regular appointment under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and other categories shall be made in accordance with the orders of the Government in force at the time of recruitment.
> (3) For the purpose of sub-rule (1) the appointing authorities shall constitute a Selection Committee.
> (4) The appointing authorities shall prepare an eligibility list of the candidates arranged in order of seniority as

determined from the date of order of appointment and if two or more persons are appointed together form the order in which their names are arranged in the said appointment order, the list shall be placed before the Selection Committee along with the character rolls and such records of the candidates as may be considered necessary to asses their suitability."

Rule 7 of the Uttaranchal Regularization of Adhoc Appointments (Outside the Purview of the Public Service Commission), Rules, 2002 provides that the seniority has to be reckoned from the date of order of appointment after the selection in accordance with rules. Rule 7 is quoted below:

"7- (1) A person appointed under these rules shall be entitled to seniority only from the date or order of appointment after selection in accordance with these rules and shall, in all cases, be placed below the persons appointed in accordance with the relevant service rules or as the case may be, the regular prescribed procedure, prior in the appointment of such persons under these rules.

(2) If two or more persons are appointed together their seniority inter se shall be determine in the order of appointment."

3. Learned counsel for the petitioner has also referred the order passed by Division Bench of Allahabad High Court (Lucknow Bench) in Writ Petition No. 4889 (SS) of 2000 – Om Prakash Narain Pandey and others Vs. State of U.P. and others to the following effects:

"Heard Sri A.K. Verma, Additional Chief Standing Counsel appearing for the respondents.

It is the case of the writ petitioners that they have been rendering continuous service since long period on the basis of appointment letters and they have been given increments from time to time. There is no allegation against the writ petitioners that they have not worked satisfactorily. We are of the view that since the writ petitioners have worked for more than ten years without any interruption and break, their case for

> regularization shall be considered by the appropriate authority, in accordance with law, within three months from the date a certified copy of this order is produced.
>
> With the aforesaid observations, the writ petitions stand disposed of."

Allahabad High Court in Writ Petition No. 5683 of 1995 (S/S) considered the Rules which were framed vide third amendment Rules of 2001, in which cut off date was 30.06.1998. Allahabad High Court in the aforesaid writ petition has held as under:

"Now, the question has arisen as to whether the persons appointed on monthly basis on ad hoc basis, can only be termed as ad hoc employees or the persons appointed on daily wage basis against any vacancy, can also be termed as appointee on ad hoc basis. In this regard mention of the word "ad hoc" is necessary to be considered. In Wharton's Law of Lexicon and Legal Laxim by Hon'ble Mr. Justice M.C. Desai, the former Chief Justice of this Court, Hon'ble Subramanyam Aiyer of this Court and Jagdish Lal author of 'Companys Act' jointly released the book published by Delhi Law House which is called Venkataramiya's Law Lexicon, according to which the word 'ad hoc' has been defined as under:

> Ad hoc – The word "ad hoc" has been defined in Webster's New International Dictionary, Vol. 1, 2nd Ed., as, "pertaining to or for the sake of, this case alone; and of a hypothesis or reason adduced to explain a phenomenon or class or phenomena, and having no other application by which its validity and significance can be tested."
>
> Similarity, this word has been given the following meaning in Webster's Third New International Dictionary, Latest Unabridged Edition:
>
> "Ad hoc: for the particular end or purpose at hand and without reference to wider application or employment (a special number appointed ad hoc according to the problem under consideration.)"

"Ad hoc: Adj.: made, established, acting or concerned with particular and or purpose (a coordinated policy instead of ad hoc decision) (an ad hoc commission of inquiry)"

"Appointments made for a particular purpose at hand without reference to wider application or employment would fall in the category of appointments on ad hoc basis. Such appointments must be considered in the context of services under the rule- making control of the Governor.

Narendra Bahadur Srivastava Vs. Public Service Commission, U.P. (1971) 2 S.L.R. 414 pg. 418 (All.)

Ad hoc promotion – They were ad hoc in the sense that they were to be officiating ones. For, they were subject to any subsequent reorganization, which would be necessary when the proposed rules are promulgated. The phrase "ad hoc" has another significance. When, for instance, consultation with the Union Public Service Commission is necessary for filling a particular post, the Government is given power to make an ad hoc appointment for a fixed period of one year beyond which it cannot last without consultation with the Union Public Service Commission- Som Nath V. Union of India, (1973) I S.L.R. 737 at p. 742 (Delhi)."

In Grolier New Webster's Dictionary the word 'ad hoc' has been described as under:

"Ad hoc"- exclusively for some understood special purpose.

Besides above, the Constitution Bench of Hon'ble Apex Court in the case of Rudra Kumar Sain and others Vs. Union of India and others – 2000 (8) Supreme Court Cases 25, has interpreted the word 'ad hoc' in Paragraph 19, which is reproduced as under:

"If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a "stopgap" arrangement and appointment in the post as "ad hoc" appointment. It is not possible

to lay down any strait-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stopgap) can be made".

In Paragraph 9 of the counter affidavit filed by the opposite parties, it has been stated that the posts of Instructors in G.I.T.Is., are within the purview of Commission and as per existing provisions contained in Annexure No. C-1 annexed thereto, the recruitment of Instructors in different trades is required to be confined to candidates selected and recommended for appointment by the Commission only. Since the process of selection by the Commission was likely to take time, it was decided to engage Instructors on daily wages possessing prescribed qualifications for the post. The appointing authority of the Instructors was the Additional Director (Administration) but in order to facilitate appointment at local level, Principals of G.I.T.Is. were authorized by the authorities to engage daily wage Instructors from amongst candidates sponsored by the local Employment Exchange so that training work in the G.I.T.Is. could continue. The alleged selection committee for the selection of daily wage Instructors was not parallel to the commission and therefore, selections made by such local selection committee cannot bestow any right on the Instructors selected on daily wages for regularization or continuance on the job.

In fact, the post of Instructors in the department in question is outside the purview of the Public Service Commission but was within the purview of the Subordinate Services Selection Board, which is also evident from the Government Order dated 13.06.1990, which has been annexed as Annexure CA-1 to the

counter affidavit. But, vide Government Order dated 28.12.1997 the Subordinate Service Selection Board was abolished vide U.P. Ordinance No. 16 of 1997 and therefore, the post of Instructor had also come out of the purview of the Selection Board.

In view of the plea taken in the counter affidavit by the opposite parties, it is clear that the appointment of the members of the petitioners was made against the post of Instructors but on daily wge basis and therefore, appointments were made to meet the contingency arising on account of delay in completing the process of regular recruitment and it was not possible to leave the post vacant till regular recruitment and it was not possible to leave the post vacant till regular selection. Hon'ble Supreme Court in the case of Rudra Kumar Sain (Supra) has held that such appointment can appropriately be called "stopgap" arrangement can appointment in the post as "ad hoc" appointment.

In the case of Khagesh Kumar (Supra) the Hon'ble Apex Court in paragraph 17 has held as under:

> "The petitioners can claim regularization only if they satisfy the requirements of the said provisions. They should have been directly appointed on ad hoc basis before October 1, 1986; they should have possessed the requisite qualifications prescribed for regular appointment at the time of such ad hoc appointment and they should have completed three years continuous service. It has been urged on behalf of the petitioners that some of the petitioners had been working as Registration Clerks on daily wage basis since much before October 1, 1986 and they would be entitled to be considered for regularization under the Regularization Rules. These provisions are applicable only to an appointment made on ad hoc basis. Though the High Court has held that

the appointment of the petitioner on daily wages basis was not an ad hoc appointment, we are not inclined to take that view and we will proceed on the basis that the appointment of the petitioners was such an appointment. The question, which survives, is whether any of the petitioners who had been appointed as Registration Clerk on daily wage basis prior to October 1, 1986 can be regarded as having completed three years continuous service. Since the order of the Governor, sanctioning appointment on the post of the Registration Clerks on daily wage basis imposes a limitation that such appointment shall in no cases exceed three months during the course of a financial year, there are long breaks between the various periods during which the petitioners were employed as Registration Clerks on daily wage basis. In Bhagwati Prasad Vs. Delhi State Miniral Development Corporation JT 1989 (4) SC 541; 1990 (1) SCC 361; this Court has laid down that for the purpose of counting three years continuous service for the purpose of regularization of artificial breaks in service for short period/periods created by the employer could be ignored but "if there is a gap of more than 3 months between the period of termination and re-appointment that may be excluded in computation of three years period" (at page 364). In view of the said decision for computing three years period of continuous service for the purpose of Rule 4(1)(iii) of the Regularization Rules, the period of break in service which was longer than three months has to be excluded and only the period which during the petitioners actually worked can be counted. In case any of the petitioners was employed as a Regularization Clerk on daily wage basis prior to October 1, 1986 and after excluding periods of breaks in service which are longer than three months, he has put in three years service, he would be entitled to seek regularization under Rule 4 (1) of the Regularization Rules provided he fulfils the requirement of Clause (ii) of the said rule. He can move the appropriate authority for such regularization and the said authority will pass appropriate orders after verifying the correctness of the claim of such a petitioner. The petitioner who do not fulfill the said condition of three years

service contained in Rule 4(1)(iii) cannot claim regularization on the basis of the Regularization Rules."

It is also necessary to mention here that vide advertisement No. 1/2003-04, the Training and Employment Directorate, U.P., Lucknow has advertised 742 posts of Instructors.

Now since the members of the petitioners are working since a long time and come within the scope of Uttar Pradesh Regularization of Ad hoc Appointments (On posts outside the purview of the Public Service Commission) Rules, 1979 as amended by third amendment dated 20th December, 2001, they are entitled to be considered under those Rules before making any regular appointment.

In view of the above facts and circumstances, this writ petition is allowed. A writ in the nature of mandamus is issued to the opposite parties commanding them to consider regularization of those members of the petitioner-association who were working on the post of Instructor on daily wage basis prior to 30.06.1998 against the existing vacancies which have come outside the purview of Public Service Commission, before making any regular appointment in accordance with relevant rules, as expeditiously as possible, preferably within a period of two months from the date of production of a copy of this order and till they are considered for regularization, they shall be allowed to continue as such."

4. On the basis of the aforesaid judgment, in Writ Petition No. 82 of 2004, the learned Single Judge of the

Uttaranchal High Court has passed the order to the following effect:

> "Counsel for the parties have submitted that the controversy raised by means of this writ petition has already been settled by the Allahabad High Court on 16.02.2004in writ petition no. 5683(S/S) 1995 U.P. Rajkiya Aydyogik Prashikshan Sansthan Dainik Vetan Karmachari Kalyan Samiti, Lucknow and another Vs. State of U.P. and others. The petitioners, in the aforesaid writ petition were similarity situated persons and they were also appointed on daily wage basis as Instructors in the different I.T.Is. of the State, along with the petitioners.
>
> By the aforesaid judgment, the Allahabad High Court has directed the respondents to consider regularization of petitioners in that writ petition who were working on the post of Instructors on daily wage basis prior to 30.06.1998 against the existing vacancies which have come outside the purview of Public Service Commission, before making any regular appointment in accordance with relevant rules, as expeditiously as possible, preferably within a period of two months.
>
> Submission of the learned counsel for the parties is that the case of the present petitioners may be disposed of on the same terms and observations made in the said judgment.
>
> In view of this statement and considering that the Allahabad High Court in the aforesaid judgment has already settled the controversy

raised in the present writ petition, the present writ petition is also disposed of on the same terms, conditions and observations made by the Allahabad High Court in writ petition no. 5683 (SS) 1995 U.P. Rajkiya Aydygik Prashikshan Sansthan Dainik Vetan Karmachari Kalyan Samiti, Lucknow and another Vs. State of U.P. and others delivered on 16.02.2004."

5. In view of the above a writ of mandamus is issued commanding the respondents to consider regularization of those persons who were on daily wage or ad hoc basis prior to 30.06.1998 against the existing vacancies and who had come outside the purview of Public Service Commission before making any regular appointment in accordance with relevant Rules and order passed by this Court in Writ Petition No. 82 of 2004.

5. Subject to the aforesaid observations, the petition is disposed of.

(Rajesh Tandon, J.)

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